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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,457	06/29/2001	Nobuyoshi Morimoto	5596-00301	1520
7590	09/28/2009			
Dan R. Christen Conley, Rose, & Tayon, P.C. P.O. Box 398 Austin, TX 78767		EXAMINER NGUYEN, NGA B		
		ART UNIT 3692	PAPER NUMBER PAPER	
		MAIL DATE 09/28/2009	DELIVERY MODE PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/895,457	MORIMOTO, NOBUYOSHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nga B. Nguyen	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 February 2009.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \*    c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. This Office Action is in response to the communication filed on February 9, 2009, which paper has been placed of record in the file.
2. Claims **1-44** are pending in this application.

### ***Response to Arguments/Amendment***

3. Applicant's arguments with respect to claims 1-44 have been considered but are not persuasive.

#### **Claim Objections:**

In response to the applicant's arguments regarding to the examiner objected to claims 28, 40, and 42 that the claim format is proper, examiner disagrees. Examiner submits that the claims are improper dependent form because the claims fail to further limit the subject matter of a previous claim. Therefore, examiner maintains the objection regarding to claims 28, 40, and 42.

#### **Section 101 Rejection:**

Examiner withdraws 101 Rejection in light of applicant's amendment.

#### **Section 103(a) Rejection:**

In response to the applicant's argument regarding to claim 1 that Lustig does not teach receiving information indicating one or more default purchasing standards for a purchase using an Internet web site to purchase product or service, examiner submits that Lustig teaches the User operates the User's computer to connect to the Publisher's Web site to submit an original offer with a selected indicator adjacent the description of

each offer, the indicator indicates that by selecting the indicator, the User commits to accepting a better offer when the better offer is available, the indicator also indicates that by selecting the indicator, the User commits to accepting the original offer unless a better offer is available (see paragraphs [0070]- [0073]), note that the original offer and the selected indicator is considered equivalent to the default purchasing standard for a purchaser). Therefore, Lustig does teach receiving information indicating one or more default purchasing standards for a purchase using an Internet web site to purchase product or service.

In response to the applicant's argument regarding to claim 1 that Lustig does not teach rejecting one or more offers based on the default purchasing standards, examiner submits that Lustig teaches the matching program, upon receiving the original offer, retrieves the available offer from the matching database and compares the available offer with the original offer to determine whether the better offer is available, if the better offer is available, accepts the better offer on behalf of the user originating the request, thus by accepting the better offer, the matching program rejects the offer matching with the original offer. Moreover, the matching program accepts the original offer if the better offer is not available, thus, by accepting the original offer, the matching program rejects the offers that do not match with the original offer (see paragraph [060]-[0061]).

Therefore, Lustig does teach rejecting one or more offers based on the default purchasing standards.

In response to the applicant's argument regarding to claim 29 that Lustig does not teach purchasing the particular item of service for the purchaser that the better price

and charging the purchaser a new price between the particular price and the better price, examiner submits that Lustig teaches each offer includes at least two parameters: identified the product, price, quality, delivery time; for example, Offer 1 (original offer) includes product ID, price 1, good quality; Offer 2 includes: same product as Offer 1, better price than Offer 1, same quality as offer 1; Offer 3 includes: same product as Offer 1, better price than Offer 2, bad quality. If the system accepts the Offer 2 as the better offer, the user will be charged the price between the price of the Offer 1 and the Offer 3 (better price). Therefore, Lustig obviously teaches purchasing the particular item of service for the purchaser that the better price and charging the purchaser a new price between the particular price and the better price.

In response to the applicant's argument regarding to claim 44 that Lustig does not teach a plurality of broker-agent program performing multiple searches in parallel for the better price, examiner submits that the matching program organizes, stores, and retrieves a plurality of available offers from a matching database, compare the available offers with the original offer to determine the better offer, thus, retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price.

4. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Claim Objections***

5. Claims 28, 40 and 42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lustig et al (hereinafter Lustig), U.S. Patent Application Publication No. US 2002/0002531, in view of Seymour et al. (hereinafter Seymour), U.S. Patent No. 6,871,190.

Regarding to claim 1, Lustig discloses a method for negotiating improved terms for a product or service being purchased over the Internet, the method comprising:

using one or more computers to perform:  
receiving information indicating one or more default purchasing standards for a purchase using an Internet web site to purchase product or service (paragraphs [0070]-[0073], the User operates the User's computer to connect to the Publisher's Web site to submit an original offer with a selected indicator adjacent the description of each offer, the indicator indicates that by selecting the indicator, the User commits to accepting a better offer when the better offer is available, the indicator also indicates that by selecting the indicator, the User commits to accepting the original offer unless a better offer is available; note that the original offer and the selected indicator submitted by the user is considered equivalent to the default purchasing standard for a purchaser in the claimed invention).

detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by the purchaser using the Internet web site (paragraph [0070]-[0071], User navigates the Publisher's Web site to submit an "original offer");

making an offer to said purchaser for negotiating said improved terms (paragraph [0073], the User can select the indicator to commits to accept a better offer when the better offer is available) ;

in response to said purchaser accepting said offer: conducting a search for said improved terms; receiving said improved terms; and executing said contract (paragraph [0078]-[0079], the Order Server receives the original offer and transmits it to the Matching Engine to initiate and facilitate a matching process; matching program accesses the available offer in the matching database, compares the available offer with the original offer to determine whether the better offer is available; the Matching Engine accepts the better offer on behalf of the User if the better offer is available);

receiving information regarding a plurality of offers for said product or service (paragraph [0044]);

rejecting or more of the plurality of offers based on the default purchasing standards (see paragraph [060]-[0061]), the matching program, upon receiving the original offer, retrieves the available offer from the matching database and compares the available offer with the original offer to determine whether the better offer is available, if the better offer is available, accepts the better offer on behalf or the user originating the request, thus by accepting the better offer, the matching program rejects the offer matching with the original offer. Moreover, the matching program accepts the original offer if the better offer is not available, thus, by accepting the original offer, the matching program rejects the offers that do not mach with the original offer); and

presenting one of the plurality of offers to the purchaser, wherein the presented offer included said improved terms (paragraph [0042]-[0044]).

Lustig does not disclose negotiating said improved terms, conducting a search for said improved terms, receiving said improved terms ***within a specified time***. However, Seymour discloses negotiating the seller sites, conducting a search for the seller sites, receiving the matched seller sites ***within a specified time*** (column 7, lines 40-55, the bidder submits bid information, the bidder agent conducts a search for the plurality seller sites to find the seller sites contain matching criteria specified by the bidder in the bid information; ***the bidder agent conducts the search with a predetermined time period, the bidder agent is arranged to terminate the search for seller sites after the predetermined time period has lapsed***). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lustig's to adopt the teaching of Seymour above, for the purpose of providing time consuming to the purchaser so that the purchaser can receive the ordered product or service limiting within a specific of time.

Regarding to claims 2-5, Lustig further discloses wherein said detecting comprises detecting said purchaser entering a credit card number, a pre-paid account number, a gift certificate number, an escrow account number, or a bank guaranty number (paragraph [0047]); detecting said purchaser viewing a particular web page; detecting comprises detecting said purchaser accessing a particular URL (paragraph [0070]); detecting comprises detecting said purchaser clicking an icon to confirm order (paragraph [0072]).

Regarding to claim 6, Lustig further discloses wherein said making an offer to said purchaser comprises displaying said contract on a screen of a computer system used by said purchaser to purchase said product over the Internet (paragraph [0072]).

Regarding to claim 7, Lustig further discloses executing said commitment to purchase (paragraph [0073]).

Regarding to claim 8, wherein said commitment to purchase comprises a purchase order for which payment has been guaranteed by said purchaser (paragraph [0047]).

Regarding to claim 9, Lustig further discloses wherein said improved terms comprise a better price, or a better delivery, or a better warranty or a better return policy compared to the terms associated with said commitment to purchase (paragraph [0074], a better price).

Regarding to claim 10, Lustig further discloses wherein making an offer to said purchaser comprises: reading information associated with commitment to purchase; determining if commitment to purchase represents an area of interest for an improved terms service provider; if commitment to purchase represents an area of interest for said improved terms service provider: making said offer to said purchaser (paragraph [0072]).

Regarding to claim 11, Lustig further discloses wherein conducting said search for said improved terms comprises conducting an auction amongst a plurality of suppliers for said product (paragraph [0078]).

Regarding to claim 12, Lustig further discloses entering a legal contract with said purchaser to supply said product under said improved terms (paragraph [0079]).

Regarding to claim 13, Lustig further discloses wherein conducting said search for said improved terms comprises searching a database of preferred suppliers for said product (paragraph [0078]).

Regarding to claims 14-26, Lustig discloses a system for negotiating improved terms for a product or service being purchased over a computer network, the system comprising: a computer program; a web site server computer system; wherein said computer program is executable on a client computer system by a purchaser to connect with the web site server (paragraphs [0048]-[0053], The Publisher Server 140), and executing the method as described in claims 1-13 above.

Regarding to claim 27, Lustig further discloses wherein said client computer system is one or more of the following: a personal computer, a laptop computer, a notebook computer, an Internet-enabled cellular phone, an Internet-enabled personal digital assistant, or an Internet-enabled television (paragraph [0038]).

Claim 28 is written in carrier medium that parallel the limitations found in claim 1 above, therefore, is rejected by the same rationale.

Claims 29-40 contain similar limitations found in claims 1-13 above, therefore, are rejected by the same rationale.

Claims 41, 42, and 44 contain similar limitations found in claim 1 above, therefore, are rejected by the same rationale. Moreover, Lustig and Seymour do not disclose intercepting a message over the Internet, wherein the message includes

commitment to purchase. However, intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lustig's in combining with Seymour to adopt the well-known feature above, for the purpose of providing more efficiency and convenient in communication over the Internet.

Regarding to claim 43, Lustig further discloses wherein executing said contract comprises contacting said purchaser with a confirmation of said product purchase (paragraph [0084]).

### ***Conclusion***

8. Claims **1-44** are rejected.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Friday from 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3600.

10. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria VA, 22131-1450

Or faxed to:

(571) 273-8300 (for formal communication intended for entry),

or

(571) 273-6796 (for informal or draft communication, please label  
“PROPOSED” or “DRAFT”).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nga B. Nguyen/  
Primary Examiner, Art Unit 3692

September 19, 2009

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